IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.287 of 2004

Reserved on : August 8, 2007.

Date of decision : 22.8.2007.

Vishal Dogra **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Bimal Gupta, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge

The appellant, who has been convicted of an offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/-; in default of payment of fine to undergo rigorous imprisonment for a further period of two years by the trial Court, has filed this appeal seeking reversal of the judgment of the trial Court and consequently his acquittal.

2. Appellant, alongwith his wife Babnesh Kumari, was charged with and tried for offences punishable under Section 302 and 201 IPC on police report under Section 173 of the Code of Criminal Procedure. Police filed the challan in the Court of concerned Judicial Magistrate, who after complying with the requirement of Section 207 of the Code of Criminal Procedure committed the case to the Sessions Court.

Whether reporters of the local papers may be allowed to see the judgment?

3. Case of the prosecution, as per record of the trial Court, may be summed up thus. Deceased Arvind Kumar, a young man of 28 years, was employed as a teacher in DAV School, Upper Khaira. On 27th May, 2003, the school was closed and so he was at his residence in village Khaira. At 1 p.m., telephone installed at the house of the deceased rang. He attended the call and soon thereafter he left the house on scooter No.HP-56-0700 informing his niece PW-21 Ruchi that he was going to see a fair. He did not return in the night. The mother of the deceased got worried. She was assured by her husband PW-1 Bali Raj Dogra that he (Arvind Kumar) might have gone to the place of some friend or relative and next morning he would go to the school where he was employed. On 28th May, 2003, PW-1 Bali Raj Dogra went to DAV School, Upper Khaira, around 8 in the morning and enquired whether deceased had come to the school. There PW-7 Rajiv Awasthi, employed as Clerk in the said school, met him and told that he had gone to village Paplah on the previous day to attend a marriage and there he saw scooter No. HP-56-0700, belonging to the deceased, parked near a shop and he thought that the deceased also might have gone to attend that marriage but he did not notice him in the marriage function. PW-7 Rajiv Awasthi then accompanied by PW-4 Chaman Lal and one Madan Mohan went to village Paplah. Scooter was not there. PW-7 Rajiv Awasthi then started making enquiries with the shopkeepers near whose shops the scooter had been spotted on the previous day. The shopkeepers told them that the shops were closed on the previous day and so they had no idea of the scooter or as to where the scooter had gone. PW-6 Ashok Kumar, employed as a Peon in the nearby Veterinary hospital, saw and heard PW-7 Rajiv Awasthi and his companions making enquiries with the shopkeepers.

He knew PW-7 Rajiv Awasthi from before. So he went to him and asked what he was enquiring about from those shopkeepers. On being told (by Rajiv Awasthi) that he had seen the scooter of the deceased parked near those shops on the previous day and that the deceased had not returned home the previous night, PW-6 Ashok Kumar told Rajiv Awasthi and his above named companions that on the previous day around 4.45 p.m. appellant came from forest side with his clothes torn and stained with blood and took away the scooter and on the way at a distance of 10-15 yards his wife, who was wearing blue coloured shirt and *Salwar* with flowering print, also rode that scooter and the scooter was driven towards village Alampur. PW-7 Rajiv Awasthi passed on this information to PW-1 Bali Raj Dogra, the father of the deceased. Then the search for the deceased started. Some persons went towards the forest from which the appellant was stated by PW-6 Ashok Kumar to have appeared on the previous day around 4.45 p.m. A dead body buried under the stones was noticed. Police was informed. Father of the deceased was also informed. Around 3 or 3.30 p.m., father of the deceased reached the spot accompanied by several persons. Soon the police also reached. The dead body was retrieved. It was completely naked but for an underwear. The dead body was identified to be that of Arvind Kumar son of PW-1 Bali Raj Dogra. Inquest was conducted. Some stones stained with blood were picked up from the spot. A pair of goggles of the deceased was also found lying at some distance. That too was seized and taken into possession. PW-1 Bali Raj Dogra, the father of the deceased, made a statement, which was recorded under Section 154 of the Code of Criminal Procedure and sent to the Police Station for the formal registration of

the case, through PW-17 Constable Dharam Singh. On the basis of that statement, case was formally registered vide FIR Ex. PW-18/A.

4. Appellant and his wife were arrested on 29th May, 2003. Appellant took the police to the site where the dead body was found. He produced one piece of stone from near that site and told that he had hit the deceased on his head with that stone. That piece of stone was stained with blood. It was taken into possession by the Police and sealed in a parcel. It may be stated that the neck of the dead body was found noosed and a wound was also noticed on the head. Appellant was then taken to the Police Station, Palampur, where he was interrogated in the presence of PW-9 Tilak Raj, Pradhan of Gram Panchayat Bandian, and PW-12 Rasham Paul, Pradhan of Gram Panchayat Wahe Da Pat. The appellant, when questioned about the ignition key of the scooter, produced the same from the pocket of his pants, which he was wearing. That key was taken into possession and sealed in a parcel. On further interrogation, the appellant disclosed that he had removed the clothes of the deceased after killing him and that after putting those clothes in a polythene bag had kept them concealed in an empty coal tar drum near the rain shelter in village Paplah and could get the same recovered. He also stated that the scooter had been abandoned by him in a *gali* in village Sujanpur Tira and could get it recovered. On the basis of the alleged disclosure statement made by the appellant, pants Ex. P-25, shirt Ex. P-26 and vest (*Baniyan*) Ex. P-27, all stained with blood, were recovered from an empty coal tar drum near the rain shelter of village Paplah. Those clothes were identified to be that of the deceased by his father PW-1 Bali Raj Dogra. Scooter was also recovered from Sujanpur Tira from a *gali* behind the house of one Shyam Lal Gupta. When the appellant

and his wife were fleeing on the scooter of the deceased on 27th May, 2003, the wife of the appellant purchased a soap cake at the shop of PW-10 Karan Singh in village Bardam. The appellant and his wife allegedly washed their blood stained clothes with that soap cake. The appellant and his wife produced their clothes, which they were wearing at the time of the commission of the crime. Clothes of the appellant and his wife were sent to the Chemical Examiner for examination for ascertaining whether they bore stains of human blood. The Chemical Examiner reported that *Salwar* and shirt of Babnesh Kumari and T-Shirt of the appellant bore stains of human blood.

5. Trial Court convicted the appellant of the offence under Section 302 IPC. His wife was convicted of the offence under Section 201 IPC.

6. Learned counsel representing the appellant submitted that the entire evidence of the prosecution is cooked up and that delay in recording the FIR, the contradictions and inconsistencies in the statements of the witnesses and the conduct of the material witnesses, particularly that of PW-6 Ashok Kumar and PW-1 Bali Raj Dogra, clearly demonstrate this. To bring the point home, learned counsel drew our attention to the testimony of the material witnesses, particularly those portions thereof which are contradictory to each other or self-contradictory and which, according to him, show that conduct of PW-1 Bali Raj Dogra and PW-6 Ashok Kumar, the star witness of the prosecution, was unnatural.

7. PW-1 Bali Raj Dogra while in the witness box proved his statement under Section 154 of the Code of Criminal Procedure, Ex. PW-1/A, which he made to the police. He stated that this statement was made by him to the police at 7 or 7.30 p.m. on 28th May, 2003.

PW-22 Sub Inspector Naratu Ram, who recorded this statement, has noted down the time of its recording as 6.10 p.m. below his dated signature. PW-17 Constable Dharam Singh, through whom this statement was sent to the Police Station for the formal registration of the case, stated that he reached the Police Station with the statement at 6.10 p.m. and that the I.O. accompanied him to the Police Station. By 'I.O.' he apparently meant PW-22 Sub Inspector Naratu Ram, who handed over this statement to him. The formal FIR was registered on the basis of this statement at 8.05 p.m. That means statement Ex. PW-1/A reached the Police Station at 8.05 p.m. The total distance between the Police Station and the site where the dead body was found is 20 Kms, per entry against column No.5 of FIR Ex. PW-18/A. PW-17 Constable Dharam Singh has stated that he and the I.O. travelled by police vehicle from the spot to the Police Station. Now, if this statement had been recorded at 6.10 p.m. on the spot and it was taken to the Police Station at a distance of 20 kms. by a vehicle, it was supposed to have reached the Police Station much earlier than 8.05 p.m., the time of the receipt of the statement at the Police Station as recorded in FIR Ex. PW-18/A, vide entry against column No.3(b). That means the statement was not recorded at 6.10 p.m., the time recorded on it below the dated signature of PW-22 Sub Inspector Naratu Ram but much later. As already noticed, PW-1 Bali Raj Dogra, who made this statement, says that it was made by him at 7 or 7.30 p.m. The FIR was sent to the concerned Judicial Magistrate on the next following day and he received it at 9.45 a.m. as per his endorsement appearing on the first sheet of the FIR. Under these circumstances, it appears that the FIR was not recorded even at 8.05 p.m. but much later.

8. Even if it be assumed for the sake of argument that statement Ex. PW-1/A was recorded at 6.10 p.m., the time recorded at its foot or at 7 or 7.30 p.m., as testified by PW-1 Bali Raj Dogra, still there is unexplained delay of about 2 to 4½ hours in recording this statement. PW-1 Bali Raj Dogra has stated that the police reached the spot around 3.30 or 4 p.m. The facts, which are recorded in statement Ex. PW-1/A, were known to PW-1 Bali Raj Dogra long before the police reached the spot. It has been stated by PW-6 Ashok Kumar that it was around 9 or 9.15 a.m. on 28th May, 2003 that he disclosed to PW-7 Rajiv Awasthi and his companions that on the previous day the appellant had fled on the scooter of the deceased from Paplah around 4.45 p.m. PW-1 Bali Raj Dogra has stated that he went to the spot after he had come to know that the appellant had been spotted taking away his son's scooter from Paplah on the previous day and that he reached the spot before the arrival of the police. Statement Ex. PW-1/A does not contain any fact which might have come to the notice of PW-1 Bali Raj Dogra after the arrival of the police. That means whatever is recorded in Ex. PW-1/A was known to PW-1 Bali Raj Dogra when the police reached the spot around 3.30 or 4 p.m., per his statement. It is recorded in the statement that because of the appellant having been spotted taking away the scooter of the deceased from Paplah, it was suspected that he was involved in the murder of the deceased. Under these circumstances, the first thing which the police was supposed to have done on reaching the spot was the recording of the statement of PW-1 Bali Raj Dogra, but his statement was recorded after a gap of 2½ to 4½ hours and the possibility of some deliberations and discussions or some embellishments during this intervening period, which was long enough, cannot be ruled out.

9. As a matter of fact, contradictions and inconsistencies, which are there in the testimony of PW-1 Bali Raj Dogra, PW-4 Chaman Sharma, PW-5 Varinder Kumar, PW-6 Ashok Kumar and PW-7 Rajiv Awasthi, which are being noticed hereinbelow, do indicate that the story about the appellant and his wife having fled on the scooter of the deceased on the evening of 27th May, 2003, from village Paplah towards village Alampur, is fabricated. And why it is fabricated is because the people of the area suspected that the appellant had killed the deceased. It is admitted by prosecution witnesses that they suspected the involvement of the appellant and his wife in the killing.

10. According to PW-7 Rajiv Awasthi when the father of the appellant, PW-1 Bali Raj Dogra, came to the school at 8 a.m. and made enquiries about the deceased, he went to Paplah on his own scooter accompanied by PW-4 Chaman Sharma and one Madan Mohan. PW-4 Chaman Sharma has also stated that he, Madan Mohan and PW-7 Rajiv Awasthi went to Paplah in search of Arvind Kumar. They do not say that PW-5 Varinder Kumar also went with them, but PW-5 Varinder Kumar says that he too went with PW-7 Rajiv Awasthi, PW-4 Chaman Sharma and Madan Mohan to Paplah when PW-6 Ashok Kumar told that the appellant and his wife had fled on the scooter of the deceased towards Alampur on the previous evening.

11. Again, PW-5 Varinder Kumar says that they reached Paplah at 12 p.m. on 28th May, 2003 when the aforesaid information was given by PW-6 Ashok Kumar but PW-6 Ashok Kumar says that three persons, including PW-7 Rajiv Awasthi, came to Paplah to enquire about the scooter of the deceased at 9 or 9.15 a.m. and it was then that he passed on the aforesaid information to those three persons. This witness does not say that four persons had come to

make enquiry about the scooter of the deceased and thereby contradicts the statement of PW-5 Varinder Kumar that four persons had gone to Paplah in search of the scooter of the deceased.

12. Another contradiction is about the distance, which the appellant had allegedly covered on the scooter of the appellant before his wife rode its pillion. PW-4 Chaman Sharma and PW-5 Varinder Kumar have stated that PW-6 Ashok Kumar told that the appellant had driven the scooter to a distance of 10-12 yards before his wife rode its pillion, but PW-6 Ashok Kumar himself stated that the wife of the appellant rode the pillion at a distance of 10-12 feet. However, in his statement to the police under Section 161 of the Code of Criminal Procedure, Ex. DX, which has been proved by PW-22 Sub Inspector Naratu Ram and which PW-6 Ashok Kumar denied having made to the police, it is recorded that the wife of the appellant rode the pillion at a distance of 10-12 yards. The contradiction in the testimony of PW-6 Ashok Kumar and statement Ex. DX about the distance may not, on the first look, appear very material but when seen in the light of the testimony of PW-4 Chaman Sharma and PW-5 Varinder Kumar, who have stated that the distance was disclosed to be 10-12 yards, it assumes significance particularly when it has been observed hereinabove that there was enough time for deliberations and discussions and for making embellishments in statement Ex. PW-1/A.

13. There is another very strong reason for doubting the version of PW-6 Ashok Kumar that the appellant fled from Paplah on the scooter of the deceased alongwith his wife and assuming that statement Ex. PW-1/A contains a coloured version about the appellant fleeing on the scooter of the deceased alongwith his wife. PW-22 Sub Inspector Naratu Ram, who reached the site where the dead body had

been spotted, first of all got the dead body retrieved and then recovered some articles like goggles, blood stained stones, earth, etc. from the spot. He recorded statement Ex. PW-1/A of PW-1 Bali Raj Dogra at 6.10 p.m. Thereafter, he conducted inquest and prepared report on the prescribed forms, Ex. PW-22/C and Ex. PW-22/D, and sent the dead body for postmortem at 6.30 or 7 p.m. This is what the witness himself has stated while appearing as PW-22. In column No.20 of inquest form of Ex. PW-22/C, which pertains to the apparent cause of death, it is recorded that the deceased had been killed by some unknown person. Again, while giving summary of the facts at page-4 in the inquest report under the column 'Brief details of the case', there is no mention about the scooter of the deceased having been spotted on 27th May, 2003 in front of a shop at Paplah by PW-7 Rajiv Awasthi or the appellant having been spotted fleeing on the scooter alongwith his wife at 4.45 p.m. the same day by PW-6 Ashok Kumar or otherwise the name of the appellant figuring therein as an accused/ suspect. Now, when according to the testimony of PW-22 Sub Inspector Naratu Ram inquest had been conducted and dead body was sent for postmortem at 6.30 or 7 p.m. after the recording of statement Ex. PW-1/A at 6.10 p.m. in which it is written that the lodger of the FIR, namely PW-1 Bali Raj Dogra, was fully convinced that his son had been murdered by Vishal Dogra, the appellant, this witness was supposed to have written in column No.20 of Ex. PW-22/C that the deceased had been murdered by the appellant, as per report lodged by his father and to have also narrated this fact while giving the brief details of the incident at page-4. Absence of these facts in the report shows that upto 6.30 or 7 p.m. it was not known as to who had killed the deceased. That means the version given in Ex. PW-1/A and the

testimony of PW-1 Bali Raj Dogra, PW-4 Chaman Sharma, PW-5 Varinder Kumar, PW-6 Ashok Kumar and PW-7 Rajiv Awasthi, that the appellant and his wife were involved in the commission of the crime is cooked up. All this shows that the version given in Ex. PW-1/A is embellished and is the result of deliberations and discussions.

14. PW-1 Bali Raj Dogra is not a truthful witness as he is contradicted in material particulars by his statement under Section 154 of the Code of Criminal Procedure, Ex. PW-1/A, with which he was duly confronted and, therefore, this is an added reason for doubting the prosecution version that the appellant was seen fleeing on the scooter of the deceased on 27th May, 2003 in the evening. While in the witness box PW-1 Bali Raj Dogra stated that at 1 p.m. when his niece Ruchi (PW-21) was serving lunch to the deceased, telephone rang and the call was attended by his niece and she recognized the caller as appellant Vishal Dogra by his voice and asked his son to attend the call and after attending the call and finishing his meals his son (deceased) left on his scooter No. HP-56-0700 saying that he was going to see a fair. However, in his statement under Section 154 of the Code of Criminal Procedure, Ex. PW-1/A, which he himself proved to seek corroboration to his testimony, he got recorded that the call was attended by his son Arvind Kumar and after attending that call he left on his scooter saying that he was going to attend a fair. There is no mention in statement Ex. PW-1/A that PW-21 Ruchi attended the call or she recognized the caller as appellant Vishal Dogra by his voice.

15. PW-21 Ruchi was not questioned by the police during the investigation. She was examined as a witness in the Court only after an application made by the prosecution, under Section 311 of the Code of Criminal Procedure, for summoning her as a witness was allowed by

the trial Court. Statement Ex. PW-1/A renders the testimony of PW21 Ruchi unbelievable, because it is recorded in the statement that the telephonic call was attended by Arvind Kumar himself and there is no reference in it that Ruchi attended the call and recognized the appellant by his voice as the caller.

16. Conduct of PW-6 Ashok Kumar, who allegedly saw the appellant and his wife driving away on the scooter of the deceased, is also unnatural. According to him, the clothes of the appellant and his wife were blood stained and torn. It is also his case that the appellant was looking unnerved and perplexed. This condition of the appellant and the condition of his clothes and that of his wife's clothes were bound to arouse suspicion of PW-6 Ashok Kumar. But, he, per his own testimony, straightaway went to his house, slept there for the night as usual and returned to his place of work on the next day and did not inform anybody about what he claims to have seen. His statement that the clothes of the appellant and his wife were torn is falsified by the condition of the clothes. We had sent for the clothes to see for ourselves whether they are torn or not because the trial Court had not made any observation in its judgment or while recording the evidence of the prosecution about the condition of the clothes. We inspected the clothes and found that none of the clothes of the appellant or his wife was torn. In fact, his shirt Ex. P-12, which has been opined by the Chemical Examiner to bear a stain of blood, was even free from wrinkles and looked absolutely smooth.

17. Again, even though it is alleged that the appellant and his wife drove away on the scooter with their clothes blood stained, no stains of blood are shown to have been found on the seats of the scooter.

18. Another circumstance, which has been relied upon by the trial Court to hold the appellant guilty of the murder of the deceased, is that the ignition key of the scooter of the deceased was produced by him to the police. Having been taken through the relevant evidence, we find that the evidence qua this circumstance is also doubtful. PW-8 Rajinder Chand Katoch and PW-12 Rasham Pal, Pradhan, in whose presence the appellant allegedly produced the ignition key of the scooter of the deceased, have testified that it was after 1 p.m. that the appellant was questioned about the ignition key of the scooter by PW-22 Sub Inspector Naratu Ram at the Police Station and then he produced the key, Ex. P-31, from a pocket of the pants which he was wearing. However, Naratu Ram in his own statement as PW-22 has admitted that the appellant had been arrested in the morning on 29th May, 2003. If it is so, his person also must have been searched at the time of his arrest and the key, if with him, was supposed to have been taken into possession in the course of such search. In fact in cross-examination PW-22 Naratu Ram has very categorically admitted that the recovery of the key Ex. P-31 was effected from the appellant before 8 a.m. on 29th May, 2003. If it is so, the testimony of PW-8 Rajinder Chand Katoch and PW-12 Rasham Paul about the production of key by the appellant is apparently untrue.

19. As regards the production of a piece of stone stained with blood by the appellant from near the spot on the morning of 29th May, 2003, the evidence is again highly doubtful. PW-22 Sub Inspector Naratu Ram has stated that he reached the spot in the morning at 8 or 8.30 and that PW-9 Tilak Raj and PW-12 Rasham Paul, who had been called telephonically through Moharrar Head Constable also reached the spot around the same time and that thereafter the appellant was

called through the residents of the area and he got recovered the blood stained piece of stone. The testimony of the witness that the appellant was called through the residents of the area is contradicted by PW-22 Sub Inspector Naratu Ram himself. In cross-examination he has stated that the appellant was with him in the morning at the Police Station when he started for the spot. If the appellant was already with him, the question of his being called through the residents of the area does not arise.

20. Circumstance with regard to the recovery of the clothes of the deceased at the instance of the appellant is also not only not proved beyond reasonable doubt but it also appears to be quite unnatural. It is not believable that the murderer would remove the clothes from the dead body before burying/hiding it under the stones and then keep those clothes concealed at a different place. Any person of ordinary intelligence is supposed to be knowing that by removing the clothes from the dead body and keeping them concealed at a distant place would by itself be an incriminating circumstance against him and, therefore, he would not do such a thing.

21. Evidence regarding disclosure statement of the appellant leading to the recovery of the clothes of the deceased and his scooter consists of the testimony of PW-9 Tilak Raj, PW-12 Rasham Paul and PW12 Sub Inspector Naratu Ram. PW-9 Tilak Raj stated that it was after the return of PW-22 Sub Inspector Naratu Ram and the appellant from the spot to Police Station, Palampur, that the appellant was interrogated and he made the disclosure statement about the clothes and the scooter of the deceased. He stated that they returned to Police Station, Palampur, around 12.30 or 1 p.m. He also stated that when the statement was made by the appellant and which was reduced into

writing in the form of a Memo., he and PW-12 Rasham Paul were present. PW-12 Rasham Paul also made a similar statement but it appears from his testimony that PW-8 Rajinder Chand Katoch was also there when the appellant was interrogated. However, Rajinder Chand Katoch (PW-8) has stated that no disclosure statement was made in his presence but only key was produced. Now, when the testimony of PW-12 Rasham Paul and PW-8 Rajinder Chand Katoch is apparently false as regards the production of ignition key of the scooter by the appellant, as demonstrated hereinabove, testimony of PW-12 Rasham Pal and PW-9 Tilak Raj that the appellant made disclosure statement about the clothes and the scooter can also not be believed. PW-12 Rasham Paul has stated that it was after return to the Palampur Police Station at 1 p.m. that the appellant was questioned by PW-22 Sub Inspector Naratu Ram about the ignition key of the scooter and then he produced key Ex. P-31 and after that the appellant made the disclosure statement about the clothes and the scooter of the deceased. As noticed hereinabove, PW-22 Sub Inspector Naratu Ram has stated that the key had been produced by the appellant before 8 p.m. That means the testimony of PW-9 Tilak Raj and PW-12 Rasham Paul about the disclosure statement leading to the recovery of the clothes and scooter of the deceased, which the appellant allegedly made soon after production of ignition key, is also not believable. Moreover, even though PW-9 Tilak Raj and PW-12 Rasham Paul say that the statement was made after 1 p.m. and probably around 2 or 2.30 p.m., because PW-12 Rasham Paul says that after recording the statement they left the Police Station for effecting recoveries at 2 or 2.30 p.m., PW-22 Sub Inspector Naratu Ram says that the said statement was recorded before 12 p.m. These contradictions, when seen in the light

of the observation made hereinabove that the earliest version recorded by the police is embellished and coloured and anti-timed by PW-22 Sub Inspector Naratu Ram, make the evidence qua recovery of the clothes and the scooter of the deceased highly doubtful.

22. Another reason for doubting the evidence with respect to the recovery of the scooter at the instance of the appellant is that the place where the scooter was found parked is at a distance of 20 kms. from the place of occurrence and in a direction just opposite to the direction of the house of the appellant. House of the appellant is at a distance of about 10 kms from the place of occurrence in the opposite direction. Why should have the appellant gone in that direction on the scooter of the deceased and that too alongwith wife, especially when he is not shown to have any vehicle of his own to return from the site where the scooter was parked to his own village, at a distance of 30 kms., and his and his wife's clothes were stained with human blood. It has come in the evidence that the scooter was recovered from a place near the residence of would be in-laws of the deceased. It is also quite unnatural that the appellant would have taken the scooter to that place because there was every possibility of his being spotted there and recognized as the person leaving the scooter of the deceased by the family members of his (deceased's) would be in-laws.

23. Evidence regarding the recovery of the shirt of the appellant consists of the testimony of PW-3 Jagdish Chand. The witness has stated that the appellant had produced his shirt and pants to the police from his house during the investigation of the case and the same were taken into possession vide Memo Ex. PW-3/B. These clothes were allegedly produced by the appellant to PW-22 Sub Inspector Naratu Ram in the presence of PW-3 Jagdish Chand and

PW-12 Rasham Paul. PW-12 Rasham Paul and PW-22 Sub Inspector Naratu Ram have not stated even a word about the recovery of pants Ex. P-11 and shirt Ex. P-12 from the appellant. No doubt PW-6 Ashok Kumar says that the appellant was wearing the pants Ex. P-11 and shirt Ex. P-12 on the fateful day but his testimony that he saw the appellant on that day has been disbelieved hereinabove. The appellant in his supplementary statement under Section 313 of the Code of Criminal Procedure, which was recorded by this Court, denies that he had produced the pants and the shirt Ex. P-11 and Ex. P-12, respectively. Thus, it does not stand proved that shirt Ex. P-12 on which the Chemical Examiner found stain(s) of blood, per report Ex. PA, does not stand proved to belong to the appellant or that it was worn by the appellant on the fateful day. In any case, the group of blood stain noticed on the shirt has not been reported to match with the blood group of the deceased.

24. From the above discussion, it is clear that the case of the prosecution does not stand proved beyond reasonable doubt. Hence, the appeal is accepted, judgment of the trail Court convicting and sentencing the appellant for offence, under Section 302 IPC, is set aside and he is acquitted. He being in jail is ordered to be released forthwith, in case his custody is not required in any other matter.

(Surjit Singh), J

August 22, 2007(sd) **(Surinder Singh), J**